IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.672 OF 1991.

Smt.Chandrabai Dhumal,]
age about 50 years, occupation :]
vegetable vendor, residing at]
C.S.No.80, Gavali Galli, Sangli.] .. Petitioner

Vs

Smt. Avadabai Namdeo Lokhande,]
age about 48 years, occupation :]
household, residing at Dafedar Wada,]
Bhui Galli, Sangli = 416 416.] .. Respondent

Mr. S.S. Swadi i/b S.G. Deshmukh for the petitioner.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 6TH JULY, 2005

ORAL JUDGMENT. :

1. The present Writ Petition under Article 227 of the Constitution of India, filed by the petitioner-tenant, seeks to challenge the concurrent finding of facts recorded by the Courts below, whereby, the respondent-landlord’s suit for possession has been decreed by the Trial Court and confirmed by the Appellate Court.

2. The matter was adjourned as the parties expressed possibility of settlement, but the learned Advocate appearing for the petitioner was unable to take instructions on that issue. Therefore, heard finally. Heard the learned Advocate for the petitioner. None appeared for the respondent.

3. The petitioner is a tenant in respect of a room admeasuring 10’ X 10’ in C.S.No.80, Gavai Galli, Sangli. The tenancy is a monthly. The petitioner has been residing in the suit premises for more than 13 years. The respondent, by Sale Deed dated 10th October, 1981, purchased five rooms which included the present premises in question. By Notice dated 19th January, 1982, the respondent-landlady demanded the possession of the same on the ground of bonafide need and arrears of rent. The same was replied to and resisted by the Notice dated 8th February, 1982. The respondent filed Regular Suit No.228 of 1982 for possession. The respondent also filed three other Suits against the remaining tenants on the same grounds. By Written Statement, the petitioner again resisted those grounds and specifically pleaded for comparative hardship. The respondent landlady examined herself and one witness Shri Raghunath Shinde. The petitioner examined himself. After considering all the material on the record, the

learned Trial Court, by its Order dated 27th September, 1985, granted the decree for possession by holding that the respondent-landlady required the suit premises bonafide and reasonably for her use and occupation and greater hardship would be caused to the landlady if the decree, as sought, not passed. The learned Trial Court further held that the respondent-landlady is entitled to Rs.215/- towards arrears of rent. Therefore, the Trial Court awarded decree of possession with mesne profits.

3. The Appellate Court also, in the Appeal filed by the petitioner-tenant, has confirmed that the respondent-landlady proved her bonafide need in each of the three suits in question. The issue of comparative hardship also tilted in favour of the respondent-landlady. By the common judgment and order dated 17th December, 1990, all the appeals filed by the other tenants, including the petitioner, were dismissed.

4. Taking into account the reasoning and findings given by the Courts below, and after hearing the learned counsel appearing for the petitioner-tenant, there is nothing pointed out or borne out from the record that the said finding is perverse or unreasonable. The respondent-landlady being the owner and using the premises for herself and for her family members' and if

supported by the evidence, I see there is no reason to disturb the findings only because the same respondent-landlady had also filed suit against all other tenants and in the said suits, both the Courts also granted the decree for possession. There is no dispute that the respondent has four sons and out of them, three are married. Therefore, the requirement of three married sons and grand children is made out and proved and has been considered by the Courts below. In this background, I am also not inclined to interfere with the concurrent findings given by the Courts below.

5. Once the bonafide need of the landlady is proved and substantiated by the material evidence on the record, then the issue of comparative hardship also goes and/or tilts in favour of the landlady. In the present case, on the issue of comparative hardship also, both the Courts favoured the landlady-respondent. Those findings also need no interference.

6. In view of this, the present Petition is dismissed. Rule is discharged. Interim order, as granted, is vacated. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]